

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 28, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GLS-4372

MAUI

Request to Approve Resolution to Lease Violation, General
Lease No. S-4372, U.S. Department of Agriculture, Natural
Resource Conservation Service, Hawaii Plant Material Center
and Field Office, Hoolehua, Molokai, Tax Map Key (2) 5-2-
001:007

APPLICANT:

U.S. Department of Agriculture, Natural Resource Conservation
Service; Business Address: 300 Ala Moana Boulevard, Room 4-118,
Honolulu, Oahu; Mailing Address: P.O. Box 50004, Honolulu, HI
96850. The Hawaii Plant Material Center is located at 4101 Maunaloa
Highway, Hoolehua, Molokai.

LEGAL REFERENCE:

Sections 171-1 Definitions and 171-54 Land License, Hawaii Revised
Statutes, as amended.

LOCATION:

Portion of Government lands of Hoolehua, Molokai, identified
by Tax Map Key (2) 5-2-001:007, as shown on the attached map
labeled Exhibit A.

AREA:

81.181 acres, more or less.

ZONING:

State Land Use District: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CHARACTER OF USE:

The Lessee shall use or allow the premises leased to be used solely for the Hawaii Plant Material Center and Field Office purposes.

TERM OF LEASE:

25 years (50 years total)

ORIGINAL COMMENCEMENT AND END DATE:

January 1, 1973 to December 31, 1998

EXTENSION COMMENCEMENT AND END DATE:

January 1, 1999 to December 31, 2023

ANNUAL RENT:

Gratis

APPLICANT REQUIREMENTS:

1. The USDA-NRCS shall pay to DLNR the sum of \$1,292.50, for the soil removed from State lands; and
2. The USDA-NRCS shall submit to DLNR an updated and complete copy of a Conservation Plan for the Hawaii Plant Material Center.

REMARKS:

In late August of 2005 Mr. Keith Harada, Contracting Officer, for the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), notified the Maui District Land Office that their contractor, Mr. Dedric Manaba, removed soil from the Hawaii Plant Material Center (HPMC) on Molokai. Molokai residents, George Peabody, Donovan Keliipuleole and Lenora Keliipuleole, brought the removal of dirt from the HPMC to the attention of Mr. Harada.

The USDA-NRCS contracted with Manaba for the removal of approximately 150 ironwood windbreak trees from the HPMC. To expedite disposal of the trees, the southern end of the subject area was excavated in order to bury the trees. Pursuant to the excavation the contractor, Mr. Manaba removed topsoil, from the premises.

Page 2, paragraph 1(a) of the Lease prohibits the removal or sale of sand, soil, rock, gravel or other materials from the premises. The Lease (page 4, paragraph 6) also requires the Lessee to comply with all municipal, state and federal laws applicable to the premises.

The Lessee is also required to submit to Lessor a conservation plan that prescribes the best management practices for activities, such as land clearing on the premises, in order to protect the land against deterioration and environmental degradation (page 13, paragraph 40).

On October 26, 2005 Daniel Ornellas, DLNR Maui District Land Agent and Keith Apo, DLNR Molokai Enforcement Officer conducted an on-site inspection of the premises along with Paul Scales, USDA State Resource Conservationist and Glen Sakamoto, HPMC Manager on Molokai.

Findings of the site inspection include the following:

1. Top-soil had been improperly removed from the HPMC premises, without any authorization from the State;
2. Mr. Dedric Manaba, Contractor hired by the USDA-NRCS failed to obtain a Maui County Grading permit prior to removal of soil from the HPMC premises; and
3. The USDA-NRCS did not have an up-to-date and complete Conservation Plan with established BMP's related to activities such as land clearing at the HPMC as required by Lease terms.

Pursuant to the site visit, it was agreed that the USDA-NRCS would have their Civil Engineer, Diana Perry conduct a survey of the excavated area to determine the estimated amount of top-soil that was removed by Mr. Manaba and that the State would conduct research to determine the value of the soil that was removed. On November 30, 2005, Ms. Perry conducted her survey and estimated that 470 cubic yards were removed from the premises. See Exhibit B. On January 13, 2005, Cyrus Chen, DLNR Real Estate Appraisal Manager, surveyed concrete and soil companies on Maui to ascertain an average value for soil on Maui. His analysis resulted in \$2.75 per cubic yard. See Exhibit C.

The DLNR Deputy Director and staff from Land Division met with representatives from the USDA-NRCS to discuss the situation and the incident. USDA-NRCS apologized and explained that it was unaware of the Lease provision that prohibited the removal of soil from the premises. The DLNR Deputy Director and staff accepted the apology and explanation of USDA-NRCS, and believe that the actions of USDA-NRCS, albeit in contravention of the Lease provisions, were inadvertent and unintentional. Thus, the DLNR Deputy Director and staff, together with USDA-NRCS, agreed to amicably resolve this matter by having the USDA-NRCS pay the fair market value of the top soil removed from State lands, akin to a Land License under HRS 171-54. Based on the engineering estimate of approximately 470 cubic yards of soil removed, multiplied by the market value of \$2.75 per cubic yard, Staff is recommending this Board approve a resolution of this matter between DLNR and USDA-NRCS by having USDA-NRCS pay to the State the sum of \$1,292.50 ($\$2.75/\text{cy} \times 470 \text{ cy} = \$1,292.50$).

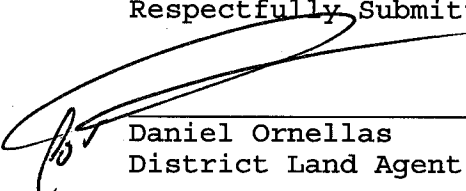
It is worth noting that staff initially thought that this matter could simply be resolved by having Mr. Manaba return the soil that was improperly taken from State lands. However, staff learned that Mr. Manaba had since transported the soil to his own property and built a loading dock by apparently mixing the soil from the USDA-NRCS site with gravel and soil he obtained from other projects involving non-State lands. Thus, it would be impossible to distinguish and segregate the soil from State lands from the gravel and soil from other non-State lands. DOCARE was also consulted but they did not believe that the facts of this case rose to the level of any criminal misconduct. Staff concurred with DOCARE in that this dispute or incident appears to be purely a civil matter (e.g., a contractual matter between DLNR and USDA-NRCS, and a contractual matter between USDA-NRCS and Mr. Manaba).

Finally, the Lessee was reminded that upon termination and/or expiration of the Lease, the Lessee at its own expense, shall restore said premises to a condition satisfactory to the Lessor. This includes the removal and disposal, into an authorized landfill, of any materials, buried or otherwise, which may cause environmental degradation.

RECOMMENDATION: That the Board find that the resolution of this matter as stated above shall best serve the public interest, and authorize staff to resolve the aforementioned Lease violation under GLS-4372 by USDA-NRCS, subject to the applicant fulfilling all of the requirements listed above, and namely:

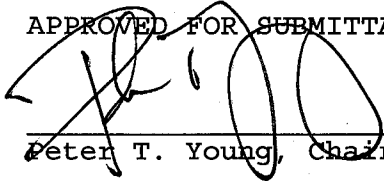
1. The USDA-NRCS shall pay to DLNR the sum of \$1,292.50, for the soil removed from State lands; and
2. The USDA-NRCS shall submit to DLNR an updated and complete copy of a Conservation Plan for the Hawaii Plant Material Center.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



Natural Resources Conservation Service
P.O. Box 50004
Honolulu, HI 96850
808-541-2600

United States Department of Agriculture

Our People...Our Islands...In Harmony

RECEIVED
MAUI DISTRICT
LAND DIVISION
2005 DEC -9 AM 11:54

December 8, 2005

Daniel Ornellas
State of Hawaii
Dept. of Land and Natural Resources
54 South High Street, Room 101
Wailuku, Maui, HI 96793-2198

Dear Mr. Ornellas,

We have completed our quantitative estimate of soil removed from the USDA Plant Materials Center on Molokai. Enclosed please find a copy of the report and computations prepared by our engineers.

The report finds our best estimate of the volume of "unaccounted fill" to be approximately 470 cubic yards.

Thank you for your patience and for the opportunity to provide this information. I greatly appreciate your efforts toward resolving this issue in a cooperative manner, and look forward to hearing from you soon. If you have additional questions or would like more information, please feel free to contact me at (808) 541-2600 ext 108.

Sincerely,

PAUL F. SCALES, JR.
State Resource Conservationist

Enclosures

Cc: Larry Yamamoto, NRCS State Conservationist
Douglas Toews, NRCS State Conservation Engineer
Glenn Sakamoto, NRCS Plant Materials Center Manager



Natural Resources Conservation Service
P.O. Box 50004
Honolulu, HI 96850
808-541-2600

United States Department of Agriculture

MAUI DISTRICT
LAND DIVISION

2005 DEC -9 AM 11:55

Our People...Our Islands...In Harmony

Subj: ENG – Hoolehua Plant Materials Center,
Earthwork Computations

Date: December 7, 2005

To: Paul F. Scales
State Resource Conservationist
Honolulu, Hawaii

File Code: 210-12

Thank you for the opportunity to review the estimated earthwork volumes from the Hoolehua Plant Materials Center.

Attached is the original earthwork computation by Diana Perry, based on her survey. Also attached is my computation to adjust the total volumes, based on a Cut/Fill Ratio of 1.30.

Please let me know if you have any further questions regarding this matter.

DOUGLAS W. TOEWS, P.E.
State Conservation Engineer
RCE No. 10164

Attachments (2)

cc: Diana Perry, Civil Engineer, NRCS Wailuku

STATE <u>Hawaii</u>		PROJECT <u>Plant Materials Center Earthwork</u>		
BY <u>DWT</u>	DATE <u>12/02/05</u>	CHECKED BY <u>MTM</u>	DATE <u>12/07/05</u>	JOB NO.
SUBJECT <u>Quantity Computation</u>				SHEET <u>1</u> OF <u>1</u>

observed Excavation and Fill:

D. Perry
comps
11/30/05

Excavation (cut) = 1945 c.y., use 1950 c.y.

Fill = 1031 c.y., use 1030 c.y.

cut/Fill Ratio

Total Fill is always less than cut, due to compaction shrinkage and transport loss, depending on type of soil.

Soil at the PMC site is mapped as:

(HvA) Holomua Silt Loam, 0 to 3 percent slopes

USDA Textural Class: Silt Loam

Unified Engineering Class: ML, Silt with low liquid limit

Typical C/F Ratio for this soil ≈ 1.30

Estimate of "Unaccounted Fill (Fu)"

$$\frac{C_{\text{Total}}}{F_{\text{Total}}} = 1.30$$

$$F_{\text{Total}} = \frac{C_{\text{Total}}}{1.30} = \frac{1950 \text{ c.y.}}{1.30} = 1,500 \text{ c.y.}$$

$$\text{Unaccounted Fill (Fu)} = F_{\text{Total}} - F_{\text{Observed}}$$

$$Fu = 1,500 \text{ c.y.} - 1030 \text{ c.y.}$$

$$Fu = \underline{\underline{470 \text{ c.y.}}}$$

Soil Survey
of Molokai
1972
Table 2
Page 156

United States Department of Agriculture



Natural Resources Conservation Service
210 Imi Kala Street, Suite 209
Wailuku, HI 96793-2100
(808) 244-3100

Our People...Our Islands...In Harmony

Subject: PMC Survey

Date: December 1, 2005

To: Paul Scales
State Resources Conservationist
Natural Resources Conservation Service
Honolulu, Hawaii

File Code: 340

Paul,

I visited the Plant Materials Center on Molokai on Wednesday, November 30, 2005 to complete a survey. The survey was to estimate the amount of soil that has been excavated from a several pits and placed into several spoil piles and on the PMC access road.

The following are my conclusions:

Pit #1 (still partially open)	834 cubic yards excavated
Pit #2 (covered)	1111 cubic yards excavated
	650 cubic yards filled
Access road (dirt portion)	104 cubic yards filled
Access road (gravel portion)	158 cubic yards filled
Spoil piles (3 total)	120 cubic yards

If there are any questions, please feel free to call me at the above number.

Sincerely,

A handwritten signature in cursive script that reads "Diana L. Perry".

Diana L. Perry
Civil Engineer
Wailuku Service Center
Wailuku, Hawaii

LINDA LINGLE
GOVERNOR OF HAWAII



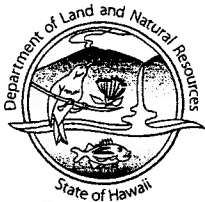
2006 JAN 20 PM 1:18

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 13, 2006

MEMORANDUM

TO: Peter T. Young, Chairperson

THROUGH: Russell Y. Tsuji, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Royalty Fee for Removal of Soil

GL No.: GL S-4372
Applicant: USDA
Location: Hoolehua, Molokai
Land Area: 81.181
Tax Map Key: (2) 5-2-1: 7
Char. of Use: Hawaii Plant Material Center & Molokai Soil Conservation Service
Field Office

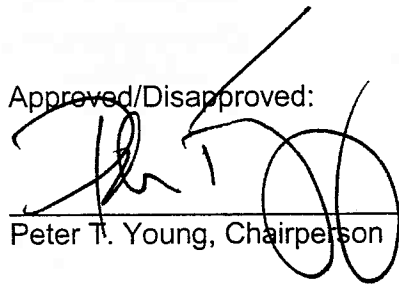
We have been requested to provide a royalty fee for the illegal removal of soil from the USDA Hawaii Plant Material Center & Molokai Soil Conservation Service Field Office. Diana Perry, Civil Engineer with the Wailuku Service Center of the Natural Resources Conservation Service (NRCS) office, completed a soil survey on December 1, 2005. Douglas Towes, State Conservation Engineer with NRCS, reviewed the survey by Diana Perry on December 7, 2005. Paul Scales, Jr., State Resource Conservationist with NRCS then reported to Land Division the volume of "unaccounted fill" to be approximately 420 cubic yards.

Research was conducted to determine a royalty fee for the soil. A search of SLIMS revealed no land licenses for soil on State land. Representatives from concrete and soils companies were surveyed. From the limited information given as to compaction characteristics and rock content, Marvin Funes, a sales manager from Ameron on Maui estimated a fair royalty fee for topsoil would be around \$2.75 per cubic yard.

EXHIBIT C

Therefore, as of January 13, 2006, the royalty fee for the illegal removal of soil from the site is recommended to be \$1,155 (\$2.75/cy x 420 cy).

Approved/Disapproved:

A handwritten signature in black ink, appearing to be "Peter T. Young", is written over a horizontal line. The signature is stylized with a large loop at the end.

Peter T. Young, Chairperson

Date ~~JAN 19~~ 2006

cc: District Branch Files
Central Files